

Introduction: Constitutional Resilience and the German Grundgesetz

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Constitution



ancestors, has been undergoing a reinvention in recent years. It no longer attacks democracy and the rule of law upfront but instead tries to adopt the language and even (at least nominally) the institutions of democratic constitutionalism to promote its autocratic aims from within. The two EU Member States where this new-school authoritarianism is most advanced are Hungary and Poland: Popular elections are being held; frantic law-making is taking place; constitutional and other courts keep handing down judgments – but each of these democratic and rule of law institutions have been successfully turned into tools of a self-proclaimed, rawly majoritarian “will of the people”. Populist authoritarian leaders claim exclusive moral representation of the people to undercut the role of the legislature, judiciary and other democratic institutions. Therefore, rejecting political pluralism and anti-constitutionalism differentiate populist authoritarians from democrats.

What lessons does the plight of the Polish and the Hungarian democracy hold for a seemingly stable constitutional state like Germany? How resilient would the German constitutional setup turn out to be in the case of an authoritarian majority taking and successfully holding on to power? What kind of legal or institutional changes may be helpful to make that event less likely and/or less hard to prevent? These were the questions we aimed to address in a debate jointly organized by Verfassungsblog and WZB Center for Global Constitutionalism, generously supported by Stiftung Mercator.

Our aim was to study the activities of the governments in emerging new-school authoritarian systems and the respective constitutional rules and conventions that were or were not in place to prevent or hinder its ascent. We also compared them with the German legal and constitutional system in order to sharpen our distinctiveness and to identify possible deficiencies while the necessary societal and political consensus required to fix them is still there. To approach that aim, we have invited a wide range of experts from Poland and Hungary to a workshop in Berlin in order to discuss with their German counterparts under Chatham House rules the conditions of success of new-school authoritarianism in their respective legal and constitutional frameworks.

The workshop started with an opening plenary session to discuss the concept and the attributes of constitutional resilience, and the relation of positive constitutional rules and cultural habits and traditions in the prevention of democratic backsliding. Subsequently, the workshop broke into three separate, parallel workshop panels where experts from Hungary/Poland and Germany discussed the experiences made and the lessons to be learned in their respective fields of expertise: I) Constitutional Courts / Judiciary / Prosecution, II) Free Speech / Media / Civil Society, and III) Electoral System / Party Regulation / Opposition Rights.

The results will be published in an online symposium on Verfassungsblog over the next days: MATTIAS KUMM and CHRISTOPH GRABENWARTER sharpen the contours of the concept of constitutional resilience. GÁBOR ATTILA TÓTH and SUSAN ROSE ACKERMAN illuminate the relation of rules and traditions/conventions in terms of constitutional resilience. MICHAELA HAILBRONNER outlines the results of the debate in the first panel on courts and the prosecution, MATHIAS HONG does the same regarding the second panel about media and civil

society, and ANNA VON NOTZ summarizes the debate in the third panel on political competition. JELENA VON ACHENBACH, DIETER GRIMM and SUJIT CHOUDHRY comment.

